# IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**FAO(MVA) No.628 of 2003.**

**Judgement reserved on: 4.5.2007**

**Date of decision: 11.6.2007**

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**Sunita Devi and others** ….. **Appellants.**

**Vs.**

**Ram Krishan and others** …. **Respondents.**

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***Coram***

**The Hon'ble Mr. Justice Kuldip Singh, Judge.**

***Whether approved for reporting?[1] No***

**For the Appellant** : ***Mr.R.K. Gutam,Sr.Advocate with Ms. Archna Dutt, Advocate.***

***For the Respondents*** : ***Mr. A.K.Bansal, Advocate, for respondent No.2.***

***Mr. K.D. Sood, Advocate, for respondent No.3.***

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***Kuldip Singh, Judge.***

The petitioners-claimants are in appeal against the award dated 19.9.2003 passed by Motor Accident Claims Tribunal, Bilaspur in M.A.C. Case No. 40 of 2002, awarding Rs.3,22,400/- compensation to the petitioners on account of death of Rup Lal in accident of truck No.HP-11-3527. The parties are referred in the same manner as before the Tribunal.

The petitioners filed claim petition under Section 166 of the Motor Vehicles Act, 1988 ( for short Act), claiming Rs.20,00,000/-

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***Whether the reporters of the local papers may be allowed to see the Judgment? Yes***

compensation on account of death of Rup Lal, in truck accident bearing No.HP-11-3527 on 30.4.2002 at Rajpura on Shimla road.

The further facts are that Rup Lal was travelling in truck No.HP-11-3527 along with his building material i.e. shuttering etc. from Talsari to Namhol . Rup Lal hired the truck for carrying building material. The truck fell down in deep gorge near village Rajpura due to rash and negligent driving of respondent No.2 and Rup Lal died on the spot on 30.4.2002. The truck was owned by respondent No.1 and was insured with respondent No.3. The petitioners are widow, children and mother of the deceased. The deceased was 34 years of age at the time of accident. He was a Govt. contractor and was earning Rs.15,000/- per month. An amount of Rs.45,000/- was spent on his last rites.

The respondents No.1 and 2 filed joint reply and took preliminary objections of maintainability, jurisdiction and non-disclosure of true facts. On merits, the accident has been admitted. It has also been admitted that deceased Rup Lal was travelling in the truck as owner of building material and he hired the truck for carrying the material. It has been denied that accident has taken place due to rash and negligent driving of respondent No.2. The accident has taken place due to sudden mechanical fault developed in the truck i.e. failure of brake system. The truck was insured with respondent No.3, therefore, liability if any, is of the insurer of the vehicle.

The Insurer- respondent No.3 has filed separate reply and has alleged that the truck was being plied in contravention of the act. The truck was having no valid route permit, fitness certificate.

The person who was driving the truck was not having valid and effective driving licence to drive the class of vehicle involved in the accident. The truck was not insured. The petitioners are not the legal heirs of the deceased. The deceased was a gratuitous, unauthorized passenger in the truck and therefore, insurer is not liable to pay any compensation. On merits the insurer denied its liability to pay any compensation.

The Tribunal framed the following issues:-

1. ***Whether Shri Roop Lal had died on account of rash and negligent driving of truck No.HP-11-3527 by respondent No.2? OPP.***
2. ***If issue No.1 is proved to what amount of compensation and from whom are the petitioners entitled to ? OPP.***
3. ***Whether the respondent No.2 had not been in possession of a valid and effective driving licence at the time of the accident? OPR-3.***
4. ***Whether Shri Roop Lal was gratuitous passenger in truck No.HP-11-3527, if so, with what effect? OPR-3.***
5. ***Relief.***

In issue No.1 the Tribunal has recorded the finding that deceased Rup Lal died on account of rash and negligent driving of truck No.HP-11-3527 by respondent No.2. In issue No.2 Rs.3,22,400/- compensation has been awarded to petitioners as per their shares. The issues No.3 and 4 were decided against the insurer.

I have heard learned counsel for the parties and have also gone through the record.

The learned counsel for the petitioners has submitted that the Tribunal has assessed the income of the deceased on the lower side and therefore, has awarded less compensation. He has submitted that even as per the income assessed by the Tribunal the petitioners are entitled to more compensation. The Tribunal has not awarded any amount towards expenses of last rites of the deceased. The multiplier applied by the Tribunal is on the lower side and interest has not been properly awarded.

The learned counsel for the respondents have submitted that petitioners are not entitled to enhancement of the compensation. The respondents have not filed any cross-objections against the impugned award. In other words they have accepted the award. Therefore, in the appeal point involved is only the quantum of compensation in as much as the findings on negligence and liability of the insurer to cover the risk have become final.

PW-2 Sunita Devi has deposed that her husband was earning Rs.15,000/- from all sources. She spent about Rs.40,000/- to Rs.45,000/- on his last rites. In cross-examination she has admitted that she has not filed any document in support of the income of the deceased . The deceased was D-class contractor. Ex.PJ is the renewal of enlisted D-class contractor including deceased Rup Lal. Ex.PK is the award letter of work in favour of Rup Lal contractor. Ex.R-1 is the Registration Certificate of the truck, Ex.R-2 is the Policy of the truck, driving licence along with certificate Ex.R-4 showing that the driving licence of respondent No.2 has been taken into possession in case FIR No.155/02 dated 30.4.2002 under

Sections 279, 337, 304(A) IPC and 187 of the MV Act. The other documents on record are not relevant in view of the limited controversy left in the appeal.

The learned counsel for the petitioners has failed to point out any defect in Rs.3100/- per month income taken by the Tribunal of deceased Rup Lal for assessing the compensation. The petitioners have claimed that the deceased was earning Rs.15,000/- per month from all sources, therefore, in the normal sources the deceased was bound to be income tax assessee. No income tax return, income tax assessment order of the deceased has been placed on record nor any other material has been placed on record to show what was the actual income of the deceased, therefore, the Tribunal has rightly taken Rs.3100/- per month income of deceased Rup Lal in absence of other evidence on record.

The learned counsel for the petitioners has submitted that by applying unit system the monthly contribution of the deceased to the family consisting of himself and four petitioners ( two minors) would be about Rs.2300/- per month The Tribunal has applied multiplier of 12 which is on the lower side. The deceased was 34 years old. In ***Managing Director, TNSTC Ltd. vs. K.I. Bindu and Ors. JT 2005 (10) SC 501***, the deceased was 34 years and Supreme Court has allowed multiplier of 13. In the present case also the deceased at the time of accident was 34 years of age as per his Matriculation Examination Certificate Ex.PF. Therefore, in view of Managing Director, TNSTC Ltd. (supra) in the present case multiplier of 13 is applicable. The petitioners are thus entitled to compensation

on account of death of Rup Lal 2300 x 12 x 13 = 3,58,800/- . The petitioner No.1 is entitled to further sum of Rs.20,000/- towards loss of consortium. The petitioners are also entitled to Rs.5,000/- for performing last rites of the deceased.

In the light of above, discussion, the findings of the Tribunal on the quantum of compensation are modified and petitioners are held entitled to Rs.3,58,800+ Rs.20,000 + R.5000 = Rs.3,83,800/- compensation along with 9% interest per annum from the date of filing of the petition till realization of the whole amount. The amount is apportioned as follows:-

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|---|---|---|
| 1.Smt. Sunita Devi ( Petitioner No.1) | = | Rs.1,80,000/- |
| 2. Miss Nidhi ( Petitioners No.2) | = | Rs.90,000/- |
| 3. Pankaj ( Petitioner No.3) | = | Rs.90,000/- |
| 3. Smt. Chhoto ( petitioner No.4) | = | Rs.23,800/- |

In view of above, the appeal is partly allowed. The impugned award is modified. The petitioners are held entitled to Rs.3,83,800/- compensation on account of death of Rup Lal along with interest at the rate of 9% per annum from the date of filing of the petition till realization of the whole amount. The compensation amount along with interest is to be paid by respondent No3-Insurer. The shares of the petitioners in the compensation are as follows:-

| | | |
|---|---|---|
| 1. Smt. Sunita Devi( Petitioner No.1) | = | Rs.1,80,000/- |
| 2. Miss Nidhi ( Petitioners No.2) | = | Rs.90,000/- |
| 3. Pankaj ( Petitioner No.3) | = | Rs.90,000/- |
| 3. Smt. Chhoto( petitioner No.4) | = | Rs.23,800/- |

The compensation amount will include liability, if any, paid determined under Section 140 of the Act. No order as to costs.

***June 11,2007*** ***( Kuldip Singh )***
***(sks)*** ***Judge.***